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February 23, 2000

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
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Room TW-A325
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

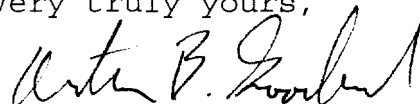
Re: MM Docket No. 98-43

Dear Ms. Salas:

Transmitted herewith are an original and four copies of the "Joint Opposition to Knox Broadcasting Group, Inc. Petition for Reconsideration" filed by the New York Times Media Company and Global Radio, L.L.C. with respect to the above-referenced matter.

In the event there are any questions with respect to this matter, please contact undersigned counsel.

Very truly yours,



Arthur B. Goodkind

Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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FEB 23 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
1998 Biennial Regulatory) MM Docket No. 98-43
Review -- Streamlining)
of Mass Media Applications,)
Rules and Processes)
)
To: The Commission)

JOINT OPPOSITION TO KNOX BROADCASTING GROUP, INC.
PETITION FOR RECONSIDERATION

The New York Times Electronic Media Company and Global Radio, L.L.C. (collectively, "Joint Parties"), by their attorneys, hereby oppose the petition for reconsideration filed by Knox Broadcasting Group, Inc. ("Knox") in the above-captioned matter.

Knox's petition should be denied because it has nothing to do with this proceeding. It is instead simply another in a series of repetitious filings by Knox seeking reinstatement of a construction permit that the Commission refused to extend, for ample cause, more three years before the Commission changed the period-of-construction rules in this rule making.

This is not a case in which a construction permit had expired and in which Commission action has not yet been taken on a pending request for reconsideration or review. Instead, as shown in the Joint Opposition (Attachment A) filed February 15, 2000 by the Joint Parties in response to still another

repetitious Knox filing, the Commission decided years ago that Knox's permit should not be extended because Knox had not been diligent in its efforts to construct its station and because Knox had lacked candor in its filings with the Commission relating to its extension request. Knox's Application for Review of that ruling was also denied almost two years before the rules were changed in this proceeding and its further request for reconsideration of the denial of its application for review was also denied before the new rules became effective.

Indeed, the Commission has already considered the question of whether the *Streamlining* Order has any applicability to Knox's case. More than one year ago, in ruling on a prior petition in this case, the Mass Media Bureau held that it had, sua sponte

considered whether Knox would be entitled to any relief under the new broadcast station construction rules and policies which take effect on February 16, 1999. See *Report and Order, Streamlining of Mass Media Applications*, MM Docket No. 98-43, 12 FCC Rcd ____ (released November 25, 1998); 63 Fed. Reg. 70039 (December 18, 1998). It appears that the WJRZ(AM) permit, which was initially issued on July 3, 1986, has been outstanding and unencumbered for almost five years. Accordingly, Knox would not receive any further time to build under the new three-year construction period requirement.¹

Knox failed to seek reconsideration or review of the Bureau's action. That action is therefore final and non-reviewable with

¹ Letter to David D. Oxenford, Esq., Ref. No. 1800B3-PHD, dated January 13, 1999.

respect to Knox's applications,² and Knox is not entitled to renew its request for relief in connection with this petition for reconsideration.

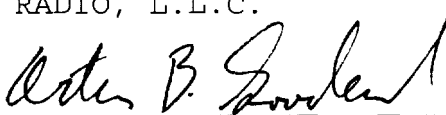
In sum, there is no basis for providing Knox with relief in the context of this proceeding when the same request has been affirmatively and repeatedly denied by the Commission on the specific facts of Knox's case. That is particularly the case when there has been a final action specifically holding that Knox is not entitled to relief under the terms of the rule making. Accordingly, Knox's petition for reconsideration in this proceeding should be denied.

Respectfully submitted,

THE NEW YORK TIMES ELECTRONIC
MEDIA COMPANY

GLOBAL RADIO, L.L.C.

By:


Arthur B. Goodkind

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(202) 467-6685

Their Attorneys

February 23, 2000

² File Nos. BMP-920528DA and BMP-950125AB.

CERTIFICATE OF SERVICE

I, Victoria C. Kim, of Koteen & Naftalin, hereby certify that true copies of the foregoing "Joint Opposition to Knox Broadcasting Group, Inc. Petition for Reconsideration" have been served on the parties listed below, via first class mail, postage prepaid on the 23rd day of February 2000.

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Victoria C. Kim

Attachment A

Copy of "Joint Opposition to Request For Waiver of
Section 73.3598 of the Commission's Rules"
filed on February 15, 2000 by
The New York Times Electronic Media Company
and Global Radio, L.L.C.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Applications of)	
)	
KNOX BROADCASTING GROUP, INC)	
)	
For an Extension of Time to)	File No. BMP-920528DA
Construct WJRZ(AM),)	
Toms River, New Jersey)	
)	
For a Construction Permit)	File No. BMP-950125AB
for a Minor Modification of)	
Facilities of WKRZ(AM))	
Toms River, New Jersey)	
)	
For Construction Permit)	File No. BP-970616AG
for a New Expanded Band AM)	
Radio Station on 1620 KHz)	

To: The Commission

JOINT OPPOSITION TO REQUEST FOR WAIVER OF
SECTION 73.3598 OF THE COMMISSION'S RULES

The New York Times Electronic Media Company ("NYT"), licensee of AM broadcast station WQEW, New York, New York, and Global Radio, L.L.C. ("Global"), licensee of AM broadcast station WNWR, Philadelphia, Pennsylvania, by their attorneys, hereby file their joint opposition to the "Request for Waiver of Section 73.3598 of the Commission's Rules," which was filed January 31, 2000 by Knox Broadcasting Group, Inc. ("Knox") in the above-captioned matter.¹

¹ As shown by NYT and Global at earlier stages in this regrettably protracted proceeding, both WQEW and WNWR would suffer serious interference from the 1550 KHz facility for which Knox seeks authorization in its applications for modification and extension of construction permit. Both NYT and Global are therefore parties in interest with standing to file this opposition.

Summary of Position

Although now repackaged as a "waiver" petition, Knox's filing relies on precisely the same facts and circumstances it has already presented to the Commission three times previously. The Commission has on each occasion correctly held that there is no basis for extending Knox's construction permit and has based its holding on explicit findings that Knox was not diligent in seeking to construct its station and that Knox was less than candid in its representations to the Commission with respect to the permit. Because Knox's new filing is simply a second repetitious petition for reconsideration of these earlier holdings and presents no basis for an entitlement to the Commission's "streamlining" procedures, it should be dismissed forthwith.

The Facts of this Case

The original construction permit for the 1550 KHz station was granted in 1986. Knox acquired the construction permit in 1991 and subsequently obtained a modification of the permit and an extension until June 10, 1992 of the required date for completion of construction. In September, 1995, the Mass Media Bureau denied Knox's related requests for another modification of the construction permit and for still a further extension, finding (1) that Knox had not been sufficiently diligent in

attempting to build its station, (2) that a prime cause of Knox's failure had been its loss of financing and (3) that Knox had failed to disclose its financial difficulties to the Commission on a timely basis.²

On February 20, 1997, the full Commission denied Knox's Application for Review of the Bureau's decision.³ The Commission's Memorandum Opinion and Order held that Knox had "failed by a significant margin" to show that it had taken all possible steps to resolve its problems and proceed with construction,⁴ that Knox had shown "a lack of diligence," and that Knox had been "less than fully candid" in its extension request

² NYT and Global did not oppose the 1991 modification of Knox's permit because that application had proposed a six-tower directional array that would not have caused interference to WQEW or WNWR. NYT and WNWR opposed Knox's subsequent application to modify its construction permit to authorize a far less expensive non-directional operation that would have caused interference to the NYT and Global stations. Knox now asserts that it does not wish to construct even that modified proposal, but that what it really seeks is instead an authorization in the expanded band. NYT and Global take no position as to Knox's right to an expanded band authorization. If the Commission were to grant such an authorization, however, with no provision for construction of Knox's non-directional 1550 KHz facility at any time, NYT and Global would have no further interest in this proceeding.

³ Knox Broadcasting, Inc., 12 FCC Rcd 3337 (1997).

⁴ Knox argues that it has constructed the station. This is incorrect. Knox received special field test authority ("SFTA") in 1994 in order to conduct signal propagation studies. Such studies were for the purpose of calculating "ground conductivities and to determine technically acceptable station operating parameters." Knox Broadcasting, Inc., *supra*, 3342. The SFTA did not authorize construction of a station nor did Knox ever construct anything more than a low power test bed facility utilizing an existing tower as a test antenna.

filings.⁵ Indeed, Knox was formally admonished for its violation of Section 73.1015 of the Rules, a provision that requires truthful responses to Commission inquiries and correspondence and which bars "any misrepresentation or willful omission bearing on any matter within the jurisdiction of the Commission."

Knox next filed a petition for reconsideration of the denial of its Application for Review. That petition was dismissed by the Mass Media Bureau as repetitious on January 13, 1999, pursuant to Section 1.106(b)(3) of the Rules.⁶ The Bureau's letter dismissing the petition found that Knox had previously presented the same arguments on which it relied in its petition to both the staff and the Commission and that its further filing was "truly repetitious." In addition, the Bureau considered, sua sponte, whether Knox would have been entitled to any relief under the new period-of-construction rules recently adopted by the Commission in its "streamlining" proceeding and concluded explicitly that no such relief was warranted.⁷

⁵ Id., at paragraphs 8-19.

⁶ Letter to David D. Oxenford, Esq., Ref. 1800B3-PHD, January 13, 1999.

⁷ The Bureau's conclusion as to the streamlining proceeding is no longer subject to review. Knox failed to seek further review of that Bureau ruling and therefore cannot file a new claim of entitlement to an extension based upon the "streamlining" procedures.

Knox's present "waiver" petition is essentially a further repetition of the 1997 Application for Review that was itself dismissed as repetitious. The facts and circumstances that Knox claims create special equities in its case are the same facts and circumstances on which it has unsuccessfully relied in its previous filings. The 33 voluminous exhibits Knox now submits in support of its request are the identical 33 exhibits it submitted with its last repetitious petition for reconsideration, and significant portions of the present filing are verbatim repetitions of the prior petition.

Knox's Repetitious Petition Must Be Dismissed

There must at some point be finality in the administrative process. Colorado Radio Corp. v. FCC, 118 F.2d 24, 26 (D.C. Cir. 1941). The policy basis for Section 1.106(b)(3) of the Rules (which has already provided the basis for dismissal of Knox's last filing) reflects numerous Commission holdings to the effect that "reconsideration will not be granted merely for the purpose of again debating matters which the Commission has deliberated on and resolved."⁸ To do so, the Commission has stated, would force

⁸ American International Development, Inc., 50 RR 2d 370 (1981). See also, to the same effect, WWIZ, Inc., 37 FCC 685, 686 (1964), *aff'd sub nom Lorain Journal Co. v. F.C.C.*, 351 F.2d 824 (D.C. Cir. 1965; WEOK Broadcasting, 4 RR 2d 503 (1965).

it "to spend its limited resources reviewing arguments it has already considered and rejected."⁹

Nothing more is involved in this case. Knox's contrary claim that its case presents some "rare and exceptional" circumstance relevant to the streamlining proceeding is transparently without merit. Nothing in the "streamlining" proceeding suggests any basis for the grant of a construction permit extension in a case in which the Commission has already denied such an extension on the basis of an applicant's lack of diligence and lack of candor. In this case, the Commission issued such a ruling with respect to the Knox permit more than three years before the new period-of-construction rules were adopted; it denied review of that decision almost two years before issuance of rules in the streamlining proceeding; and it ruled prior to the effective date of the new "streamlining" procedures that such procedures were not applicable to Knox. The fact that Knox has managed to continue litigating this case through a series of further repetitious filings is by no stretch of the imagination a "rare and exceptional" circumstance warranting reinstatement of a construction permit that was terminated for cause. As shown above, the facts and circumstances that Knox has again submitted here are the same facts and circumstances that the Commission has already rejected

⁹ Amendment of Commission's Rules of Practice and Procedure, 46 RR 2d 524 (1979).

three times as a basis for any grant of relief. This unnecessary waste of Commission resources should now be put to an end.

Conclusion

For the reasons set forth above, the Commission should dismiss Knox's request for waiver.

Respectfully submitted,

THE NEW YORK TIMES ELECTRONIC
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February 15, 2000

CERTIFICATE OF SERVICE

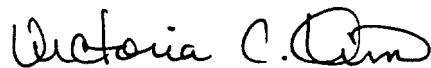
I, Victoria C. Kim, of Koteen & Naftalin, hereby certify that true copies of the foregoing "Joint Opposition to request for waiver of Section 73.3598 of the Commission's Rules" have been served on the parties listed below, via first class mail, postage prepaid on the 15th day of February 2000.

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